

Board of Zoning Adjustment

Staff Report

August 17, 2020



Case No:	20-APPEAL-0003
Project Name:	Hazelwood Avenue Appeal
Location:	4218 Hazelwood Avenue
Appellant:	Stephen and Theresa Barmore
Representative:	Stephen and Theresa Barmore
Jurisdiction:	Louisville Metro
Council District:	15 – Kevin Triplett
Case Manager:	Jon E. Crumbie, Planning & Design Coordinator

REQUEST(S)

- Appeal of an administrative decision regarding nonconforming rights

CASE SUMMARY/BACKGROUND

The Appellant submitted a nonconforming rights determination request on February 11, 2020. Staff conducted a review of the applicant's information and determined that there was sufficient information that a nonconforming use (two dwelling units) one in the main structure and one in the accessory structure has been established in the R-5 Single Family Zoning district. Therefore, staff concluded that the property does have nonconforming rights for two dwelling units on a single parcel and submitted a letter to the Appellant stating that decision on May 7, 2020.

The Appellant filed an appeal of the administrative decision on June 9, 2020, which is within the 30-day appeal period. The Appellant submitted information with the appeal application to support their basis of appeal concluding that there is a two family structure (main residence) and a one family structure (accessory structure) for a total of three residential units on the parcel. This documentation is part of the record and is available for the Board to review on the Louisville Metro Government Agenda & Meeting Portal (<http://louisville.legistar.com>).

STAFF ANALYSIS/FINDINGS

The following sections of the LDC are applicable to this case:

Section 1.2.2 Definitions

Section 1.3.1 Use

As currently defined in LDC Sec. 1.2.2, the following definitions are relevant to the appeal:

Nonconformity (or Nonconforming) -An activity or a building, structure or a portion thereof which lawfully existed before the adoption or amendment of the zoning regulation, but which does not conform to all of the regulations contained in the zoning regulation which pertain to the zone in which it is located.

According to Jefferson County PVA records, the property type is listed as single family. The PVA lists the structure as built in 1938.

The Appellant provided documentation related to their ownership and use of the property for residential activities. The property is in the original city and must be dated back to 1971. The Polk Directories show two people living in separate dwelling units in 1967 (one in the main structure and one in the accessory structure) and one person (main structure) in 1984. The Polk Directories do not show three people living in separate dwelling units until 1987. There are four people in the main structure in 1994, four people in the main structure in 2000, and two people in the main structure in 2017. The applicant included a list of names she pulled from the City Directories. The list is similar to the list staff compiled. The Appellant also submitted affidavits, LGE bills for the main structure from 2005 – 2011, and for the accessory structure from 2011 – 2012. Also, Metro Housing receipts were submitted with two or three recipients listed. Without further information to corroborate the Appellant information staff cannot determine that a two family structure (main residence) existed on the property since 1971.

Staff Conclusions

Staff did not have sufficient information in the review of the nonconforming rights case that the second unit existed in the main structure on the property in 1971. The Appellant has not submitted additional information to change staff's previous conclusion. Therefore, staff believes that the original decision was correct, and the property does not have established nonconforming rights for a second unit in the main structure.

Standard of Review

Pursuant to LDC 11.7.3 and KRS 100.257, the Board of Adjustment shall have the power to hear and decide cases where it is alleged by the applicant that there is error in any order, requirement, decision, grant, or refusal made by an administrative official in the enforcement of the zoning regulation.

Based upon the file of this case, this staff report, and the evidence and testimony submitted at the public hearing, the Board must determine:

1. Did the residential use (second dwelling unit in the main structure) exist on the property in 1971?
2. If yes to question 1, did this use of the property continue to the present day?

If the Board answers yes to both questions, then the Board would concur with the applicant, and the approval of such motion would overturn staff's decision.

If the Board answers no to any of the two questions listed above, then an approval of such a motion would affirm staff's decision.

RELATED CASES

20-NONCONFORM-0004 – The administrative decision in this case is the subject of the appeal.

INTERESTED PARTY COMMENTS

No comments submitted.

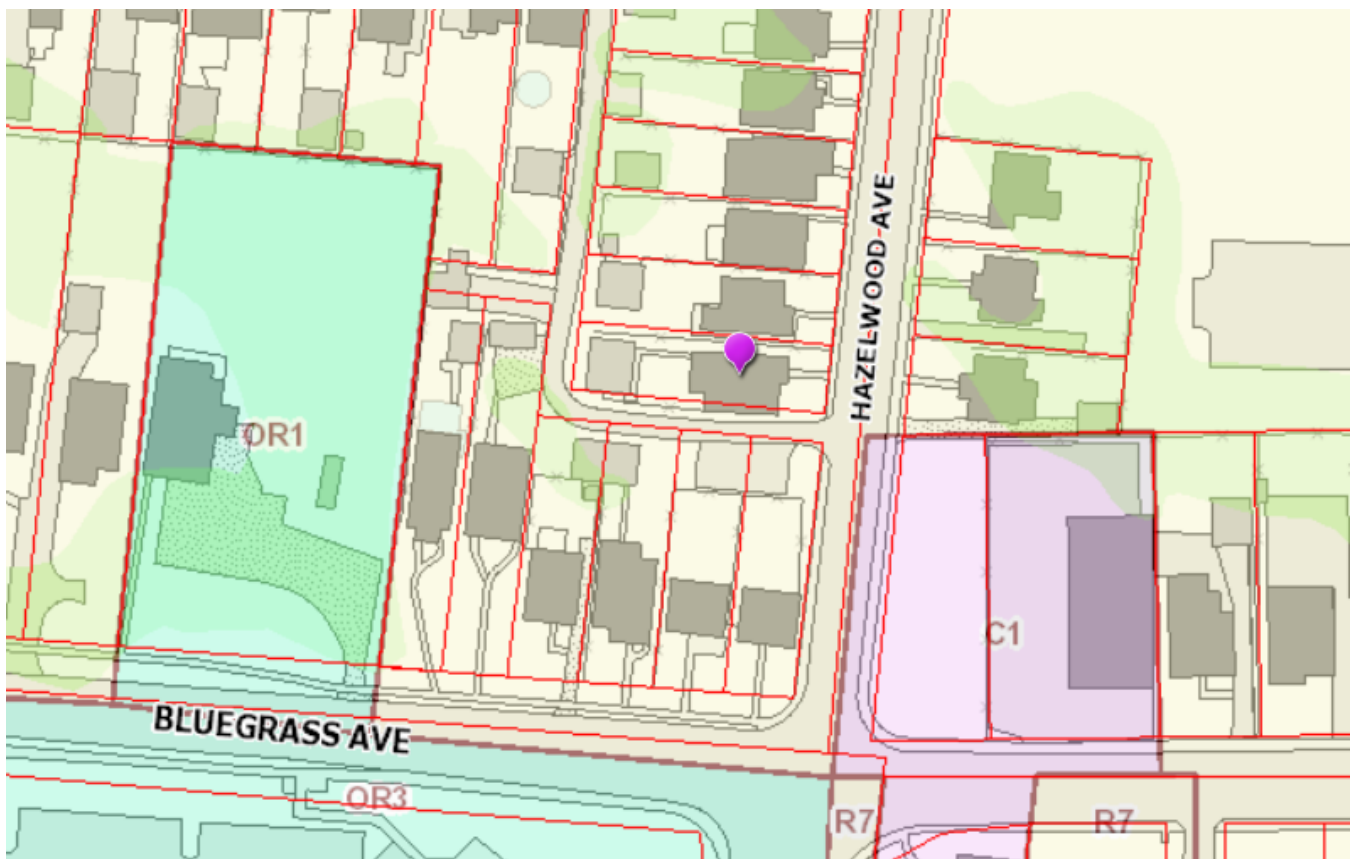
NOTIFICATION

Date	Purpose of Notice	Recipients
7/29/2020	Notification of appeal of an administrative decision	Adjoining property owners, Appellant, and PDS staff GovDelivery District
8/9/2020	Legal ad for notification of appeal of an administrative decision	Courier Journal - published in paper by Appellant or Representative

ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Site Photos

1. Zoning Map



2. Aerial Photograph



3. Site Photos



